

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Proposed Implementation of High Frequency)
Portion of Loop (HFPL)/Line Sharing Service.) Docket No. 00-0393 (Rehearing)
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JOINT CLECS' BRIEF ON EXCEPTIONS

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Pursuant to Section 200.830 of the Commission's Rules, 83 Ill. Adm. Code Section 200.830, AT&T Communications of Illinois, Inc.; Covad Communications Company.; Rhythms Links, Inc.; Sprint Communications Company L.P. d/b/a Sprint Communications L.P.; and WorldCom, Inc. (collectively, "Joint CLECs"), by their attorneys, submit their Exceptions to the Proposed Order on Rehearing ("Proposed Order") issued by the Hearing Examiner in the above-captioned proceeding.,

Joint CLECs concur with the Proposed Order's conclusion that the Broadband Service Offering must also be offered as a UNE. Joint CLECs also agree that the evidence supports zero charges for the HFPL, manual loop qualification and OSS modification. However, the Joint CLECs take exception to the Proposed Order's findings denying CLECs access to the components of Project Pronto as UNEs and denying CLECs direct access to the same OSS data and functionality available to SBC/Ameritech. These two findings in the Proposed Order are legal error for several reasons, and must be modified. In addition, the Proposed Order should be clarified to require SBC/Ameritech to file specific tariff language to implement the Commission's directives. To this end, Joint CLECs have included proposed tariff language, appended to this Brief On Exceptions and designated as Attachment 1 which provide the detail necessary to implement the Commission's requirement that SBC/Ameritech unbundle the High Frequency Portion of the Loop ("HFPL") as an end-to-end UNE (Attachment 1) and, if the recommendations herein are adopted, to implement the unbundling of the Project Pronto Network architecture .

First, the Proposed Order ignores the clear weight of evidence in this proceeding which proves that it is technically feasible, and reasonable, for CLECs 1) to have access to Project Pronto components as UNEs, either individually or in combination, 2) collate lien cards in the

NGDLC equipment located in remote terminals; and 3) obtain and use direct access to SBC/Ameritech's OSS. While recognizing the ample evidence justifying such CLEC access in its analysis, the Proposed Order seemingly ignores that evidence and inexplicably stops short of ordering such access. As a result, the Proposed Order errs by not affording the evidence in the record the proper weight.

Second, the Proposed Order errs by deviating from the Commission's three prior orders granting CLECs access to Project Pronto components as UNEs and direct access to SBC/Ameritech's OSS data and functionality, despite the utter lack of any "new" evidence that would warrant this dramatic departure from prior orders. While discounting all of SBC/Ameritech's so-called "new" evidence, the Proposed Order changes course and declines to grant CLECs the full access that the record supports, and which the Commission ordered three times before based on a similar record.

SBC/Ameritech presented nothing new that would justify or support the Proposed Order's departure from its prior orders. SBC/Ameritech regurgitates the same arguments in this proceeding as it did the three times before. Further, the evidence in this proceeding is entirely consistent with the earlier three proceedings, and the only "new" evidence in this proceeding bolsters the position of the Joint CLECs. For example, the Joint CLECs demonstrated beyond doubt that there is no merit whatsoever in SBC/Ameritech's so-called "cost study" claiming it would cost \$500 million to unbundle the components of Project Pronto and allow line card collocation. CLEC Joint Brief, at 41, 101-117. Further, the evidence in this proceeding clearly shows that SBC/Ameritech's threat to withhold Project Pronto from the consumers of Illinois is disingenuous and designed only to serve as a scare tactic to force the Commission into making a decision inconsistent with federal law. Given that the lack of new record evidence to support

SBC/Ameritech's position, the Proposed Order errs when it deviates from the Commission's three prior orders regarding access to Project Pronto and direct access to SBC/Ameritech's OSS.

Third, the Proposed Order errs by setting public policy that is contrary to the goals of the Telecommunications Act and Illinois law. SBC/Ameritech has been able to delay complying with the FCC's Line Sharing Order, the UNE Remand Order and the Telecommunications Act by engaging in frivolous litigation, and mounting a campaign to disparage the Commission in the press and before some members of Congress. By deviating from the Commission's prior orders, the Proposed Order implicitly condones SBC/Ameritech's conduct.

Furthermore, the Proposed Order weakens the newly-enacted Section 13-801 of the Illinois Public Utilities Act ("PUA"). That Section, enacted during the pendency of this rehearing, directs the Commission to require access to UNEs "to the fullest extent possible to implement the maximum development of competitive telecommunications service offerings." The Proposed Order does just the opposite by reducing the number of UNEs available to CLECs and thereby hindering the development of competitive telecommunications service offerings in Illinois.

Finally, the Proposed Order undermines the public policies articulated by the Commission in the SBC/Ameritech Merger Order. SBC/Ameritech's conduct and positions in this proceeding are contrary to the promises that SBC/Ameritech made to the Commission to gain approval of the merger, specifically that "the merger also should enable SBC/Ameritech to employ DSL more rapidly." SBC Communications, Inc. et. al., SBC/Ameritech Illinois Joint Application for Approval of the Reorganization of Illinois Bell Telephone Company d/b/a SBC/Ameritech Illinois, Docket No. 98-0555, Sept. 23, 1999, at p. 28-29 ["Merger Order"]. Moreover, SBC/Ameritech's noncompliance with the Commission's policies violates the

SBC/Ameritech Merger Order. The Commission warned SBC/Ameritech that it was placing SBC/Ameritech “on notice that any attempt to engage in a pattern of non-compliance with this Commission’s policies and decisions will face serious and deliberate Commission action.” Merger Order, at p. 130-131. Rather than forcing SBC/Ameritech to meet its merger obligations, the Proposed Order rewards SBC/Ameritech’s threats, delayed DSL deployment, and litigation tactics. If the Commission’s warnings are to have any meaning, the Commission cannot reward SBC/Ameritech for pursuing frivolous, time-consuming litigation and scare tactics by altering the pro-competitive result that it ordered three times before.

As the Commission is aware, the Joint CLECs disagreed with the Commission’s decision to grant rehearing but understand the desire to have a complete record, particularly for appeal purposes. However, when that rehearing record reinforces the Commission’s original order, substantive changes to the original order are legal error. For all of the above reasons, SBC/Ameritech should not be “rewarded” with a Proposed Order that retreats significantly from the Commission’s order. Accordingly, the Proposed Order should be modified as described below or, in the alternative, the Commission should simply reaffirm its March 14, 2000 Order in the case below.

I. EXCEPTION NO. 1 – THE PROPOSED ORDER SHOULD BE CLARIFIED TO REQUIRE SBC/AMERITECH TO FILE SPECIFIC TARIFF LANGUAGE TO IMPLEMENT THE REQUIREMENT THAT SBC/AMERITECH UNBUNDLE THE HFPL AS A UNE AS CONTEMPLATED BY THE ARBITRATORS IN TEXAS

The Proposed Order properly finds that SBC/Ameritech should be required to unbundle as a UNE the end-to-end HFPL provided on the Project Pronto architecture. In an effort to short-circuit further delay in implementation of this requirement, the Proposed Order “order[s] SBC/Ameritech to file, in Illinois, a tariff identical in all respects, including pricing, delivery

intervals and opportunity for the installation of new line cards and services, to the tariff for an end-to-end HFPL UNE ordered by the arbitrators in Texas.” Proposed Order, p. 33.

The Proposed Order’s intention to provide Competitive Local Exchange Carriers (“CLECs”) with a UNE that they can utilize expeditiously to provide wireline-based Digital Subscriber Line (“DSL”) service is admirable and welcomed. However, the Proposed Order incorrectly assumes that a tariff is being filed in Texas to implement the requirements imposed on SBC by arbitrators in that state. Rather than a tariff, SBC and various parties are working on “conforming” contract language designed to implement the Texas arbitrators’ decision. Indeed, because SBC has insisted that carriers meet separately with SBC to “negotiate” conforming contract language, it appears as though there will not be a comprehensive, unified document that will make available to CLECs the end-to-end HFPL UNE, as contemplated by the Texas arbitrators, which can be adopted as a tariff in Illinois. Moreover, as Joint CLECs understand it, conforming contractual language will not be completed and submitted to the Texas Public Utilities Commission for approval until after Reply Briefs On Exception are due in this proceeding. Consequently, it is impossible to require the filing of a tariff identical in all respects to the “tariff for an end-to-end HFPL UNE ordered by the arbitrators in Texas.”

The Joint CLECs have drafted specific language that would implement the requirements of the Texas arbitrators that an end-to-end HFPL UNE be made available. That language is appended to this Brief On Exceptions and designated as Attachment 1. Joint CLECs urge the Hearing Examiner to specify that the language contained in Attachment 1 be adopted by the Commission to implement the requirement that an end-to-end HFPL UNE be made available. The Commission has the full authority to do so under Section 13-501 of the PUA, which provides in part that “after a hearing, the Commission may impose an interim or permanent tariff

on a telecommunications carrier as part of the order in the case.” 220 ILCS 5/13-501(b) (2001).

By adopting the Joint CLECs language the Hearing Examiner and the Commission will ensure that the end-to-end HFPL UNE desired by the CLECs and that was ordered by the Texas arbitrators will be implemented without further delay. Such a requirement will also make clear the terms and conditions under which the HFPL UNE must be made available and thereby reduce the chances of litigation that typically accompanies tariff compliance filings.

EXCEPTION NO. 1 – PROPOSED REPLACEMENT LANGUAGE

For the foregoing reasons, the fourth full paragraph on page 33 of the Proposed Order that begins “Nonetheless, We are concerned....” should be deleted and replaced with the following paragraph:

Nonetheless, We are concerned that our prior order would, in all likelihood have delayed CLEC use of the various network elements as SBC/Ameritech, under the guise of making the network and OSS modifications necessary to support the delivery of elements, waited until a requesting CLEC brought an enforcement action compelling delivery. To that end, in this order on rehearing, we accept Staff’s alternative proposal and order SBC/Ameritech to file, in Illinois, a tariff identical in all respects, including the opportunity for the installation of new line cards and services, to the tariff language proposed by the Joint CLECs that was appended to their Joint Brief on Exceptions and identified as Attachment 1. Delivery and installation intervals for provisioning the end-to-end HFPL UNE are one business day for loops not requiring conditioning and three business days for loops requiring conditioning. The language the Joint Brief on Exceptions Attachment 1 is designed to implement the end-to-end HFPL UNE as it was ordered by the arbitrators in Texas. Prices for the end-to-end HFPL UNE shall be set on an interim basis in accordance with the adjustments made by Staff witness Koch. Such prices will remain in effect until such time the Commission adopts permanent TELRIC prices and are subject to true-ups. Accordingly, pursuant to our authority under Section 13-501 of the Illinois Public Utilities Act, we direct SBC/Ameritech to modify its tariff within 30 days of the date of this order to incorporate verbatim the language proposed by the Joint CLECs. We further conclude that the tariff should make clear that CLECs with interconnection agreements will be able to order out of the tariff and the tariff will govern the terms, conditions and rates of the end-to-end HFPL UNE unless and until the Commission modifies this finding. These requirements, which are fully consistent with the law and the procompetitive policies of the General Assembly, should make available to CLECs an end-to-end HFPL UNE that they can use to provide wireline-based DSL services to their customers in an expeditious manner. This solution moots all of SBC/Ameritech’s arguments relating to the following issues: line card ownership; line card incompatibility; access to sub-loops; PVP exhaust and stranded capacity. With this solution, We expect that CLECs will be able to designate the installation of all technically

feasible line cards. We also expect SBC/Ameritech to implement all technically feasible quality of service classes. To that end, We order SBC/Ameritech to provision constant bit rate (CBR) quality of service in excess of 96 kbps such that CLECs can obtain a throughput level that meets their customer requirements. The evidence demonstrates that there is no technical reason for limiting CBR permanent virtual circuits to 96kbps.

The Joint CLECs note that the foregoing proposed replacement language can be used on as stand-alone language to implement the Proposed Order in its current form. In the event that the Hearing Examiner and Commission agree with the Joint CLECs recommendation that SBC/Ameritech should be required to unbundle the piece parts of the Project Pronto network architecture in addition to requiring the end-to-end HFPL UNE, then the proposed replacement language set forth in Exception 2 should be adopted.

II. EXCEPTION NO. 2 – PROJECT PRONTO COMPONENTS MUST BE UNBUNDLED AS UNES

The Commission's March 14, 2001 Order in the case below granted CLECs access to six individual Project Pronto UNES. The UNES were: (1) lit fiber subloops between the RT and the OCD in the central office consisting of one or more PVPs (permanent virtual paths) and/or one or more PVCs at the option of the CLEC; (2) copper subloops; (3) ADLU line cards owned by the CLEC and collocated in the NGDLC equipment in the RT; (4) ADLU line cards owned by the ILEC in the NGDLC equipment in the RT (5) a port on the OCD in the central office; (6) any combination of the foregoing UNES. March 14 Order at p., 28 . The March 14 Order is consistent with the Covad/Rhythms Arbitration Order and subsequent Rehearing Order in Docket No. 00-0312/0313 issued on August 17, 2000 and February 15, 2001, respectively. The Proposed Order, however, departs from these prior orders and declines to order access to these six UNES, apparently giving credence to SBC/Ameritech's claims that it is not technically or economically feasible to provide the components of Project Pronto as UNES. Given the complete lack of evidence to support SBC/Ameritech's claims, the Proposed Order errs by

reversing the Commission's March 14 Order regarding CLEC access to six individual Project Pronto UNEs.

Under Illinois law, SBC/Ameritech bears the burden of proving the reasonableness of the rates, terms and conditions of its tariff. When SBC/Ameritech filed its line sharing tariff, the Commission was concerned enough to suspend and investigate the tariff under Section 9-201 of the PUA. Proposed Order, at 1. That section makes clear that the utility must prove that its tariff is just and reasonable. 220 ILCS 5/9-201(c).¹ Illinois courts have consistently upheld the statutory provisions that unambiguously place the burden of proof on the utility to demonstrate that its tariff proposals are just and reasonable.² This burden goes to the *details* of the proposed tariff, and not just to whether it is just and reasonable in general. In reviewing a Commission order for a local exchange company rate setting case, a state appeals court recently confirmed that the utility must demonstrate the reasonableness of all rate components, including rate elements included in its costs, operating costs, the value of property used in providing service and the rate of return on capital.³ The same court made clear that the utility has an affirmative burden of proving the reasonableness of its tariff.⁴

As the Proposed Order acknowledges, SBC/Ameritech failed to satisfy its burden. Indeed, the Proposed Order did not credit *any* evidence that SBC/Ameritech presented on

¹ 220 ILCS 5/9-201(c). Under Sections 13-101 and 13-504 of the Act, the foregoing provisions of Article IX of the PUA are fully and equally applicable to the rates, charges, tariffs and classifications for the offer or provision of noncompetitive telecommunications services.

² See, e.g., *City of Chicago v. Commerce Commission*, 13 Ill. 2d 607, 617 (1958) (in any investigation of the reasonableness of a utility's rates, charges, classifications, rules, regulations, contracts or practices, the burden of proof is on the utility); *Central Illinois Public Service Co. v. Commerce Commission*, 5 Ill. 2d 195, 211 (1955) (where Commission decides to suspend a rate and hold hearings on it, the burden of proof falls on the proponent of the rate, whether the proposal is for a change in an existing rate or for the establishment of a new rate); *Fleming v. Commerce Commission*, 388 Ill. 138, 160 (1944); *Citizens Utility Board v. Commerce Commission*, 276 Ill. App. 3d 730, 746 (1st Dist. 1995); *Citizens Utilities Co. of Illinois v. O'Connor*, 121 Ill. App. 3d 533, 541 (2d Dist. 1984) (utility has burden of showing that its proposed rates are reasonable, and must produce sufficient evidence to meet that burden).

³ *Citizens Utility Board v. Commerce Commission*, 276 Ill. App. 3d 730, 746 (1st Dist. 1995) (Citations omitted.).

rehearing. Instead, the Proposed Order relies upon Joint CLECs affirmative evidence that access to Project Pronto components as UNEs is just and reasonable, technically feasible and required by law. Joint CLEC Brief, at 22.

Indeed, the Proposed Order's analysis refutes all of SBC/Ameritech's claims of technical and economic infeasibility. The Proposed Order acknowledges that the CLECs proved that it is technically feasible to offer Project Pronto components as UNEs. Proposed Order, at 32; Joint CLEC Brief, at 29-30. The Proposed Order recognizes that the CLECs demonstrated that Project Pronto components must be unbundled under the FCC's "necessary and impair" analysis, and that the CLECs have been impaired by lack of access to Project Pronto components as UNEs and line card collocation. Proposed Order, at 32. The Proposed Order acknowledges the ample evidence in this proceeding supporting unbundling the Project Pronto components under the FCC's rules on unbundling of packet switching. Proposed Order, at 32. The Proposed Order also rejects SBC/Ameritech's \$500 million in alleged costs from unbundling as a "doomsday 'cost study'" Proposed Order, at 32, and accordingly finds it is economically feasible for SBC/Ameritech to unbundle Project Pronto components based on the substantial evidence submitted and cited by Joint CLECs and Staff. Proposed Order, at 30 (Staff acknowledges that SBC/Ameritech used worst case scenarios to arrive at the supposed "cost" of unbundling Project Pronto); Joint CLEC Brief, at 101 (summarizing evidence that SBC/Ameritech's supposed "costs" used worst case scenarios in every instance, had no support at all, were based on speculation and grossly inflate the supposed costs of unbundling Project Pronto). The Proposed Order does not refute the Commission's March 14 Order acknowledging that NGDLC line cards are pieces of equipment and meet the federal standard for collocation. Proposed Order, at 33;

(Continued)

⁴ *Id.* at 747, quoting *People ex rel. Hartigan v. Commerce Commission*, 117 Ill. 2d 120, 135-36 (1987).

Order, at 28-29. Finally, the Proposed Order reaffirms the Commission's authority to order that the components of Project Pronto be offered as UNEs. Proposed Order, at 32. Yet, the Proposed Order improperly declines to exercise this authority. As a result, the Proposed Order's conclusions fall far short of, and contradict its own thorough analysis by declining to order the components of Project Pronto as UNEs and allow line card collocation by CLECs. Instead the Proposed Order orders only an end-to-end UNE over the Project Pronto architecture.

The Joint CLECs infer from this approach, and the discussion in the Proposed Order, that the proposed order sought to balance the delay resulting from further litigation regarding the Project Pronto components, with a desire to provide CLECs access to Project Pronto on an unbundled basis as quickly as possible. For example, the Proposed Order states:

...We are concerned that our prior order would, in all likelihood have delayed CLEC use of the various network elements as SBC/Ameritech, under the guise of making the network and OSS modifications necessary to support the delivery of elements, waited until a requesting CLEC brought an enforcement action compelling delivery.

The Proposed Order's concerns are appreciated by the Joint CLECs, given that the CLECs have already been impaired due to lack of access to Project Pronto components and line card collocation. Proposed Order, at 32. While the Joint CLECs welcome a Project Pronto end-to-end UNE as an interim first step and welcome a Commission Order requiring SBC/Ameritech to file a tariff identical to Attachment A to the Joint CLEC Brief on Exceptions, such an offering is not sufficient by itself. The Commission can order the end-to-end HFPL and require SBC/Ameritech to file the conforming tariff while still requiring SBC/Ameritech to offer all of the UNEs that it already has ordered three times. Joint CLECs acknowledge SBC/Ameritech's claims of PVP exhaust until SBC/Ameritech deploys Release 11 of the Alcatel software. Based on the evidence presented, it is likely that Release 11 will be operational in the 4th Quarter of 2000. Given the capacity issues until Release 11 is operational, the Commission should order

SBC/Ameritech to deploy Release 11 as soon as operationally possible. If it is not operational by November 1, 2001, then SBC/Ameritech should explain why to the Commission, and Joint CLECs should have the chance to comment. Accordingly, Joint CLECs ask the Commission to reaffirm its prior list of UNEs with the exception that SBC/Ameritech need not offer multiple PVPs per channel bank until such time as Release 11 is operational.

By ordering only partial unbundled access to Project Pronto, the Proposed Order implicitly endorses some portion of SBC/Ameritech's claims that full unbundling is not feasible. Yet, as discussed above, the Proposed Order's analysis largely rejects such claims and instead relies on the ample evidence of technical feasibility presented by CLECs. Joint CLECs Brief at 85-100. For example, the CLECs provided ample record evidence demonstrating the technical feasibility of providing CLECs with multiple Permanent Virtual Paths ("PVPs") per Channel Bank Assembly ("CBA") in the Litespan NGDLC equipment as soon as Alcatel software Release 11 is available and deployed. CLEC Joint Brief, at 88. As the record supports further unbundling, the Proposed Order errs by "splitting the baby" and ordering CLEC access only to the end-to-end UNE.

Therefore, the Proposed Order must be modified as specified below to allow CLECs access to six different categories of Project Pronto components as UNEs, as well as line card collocation. Thus, the Joint CLECs submit that the Commission should reaffirm its March 14 Order on Project Pronto unbundling, with the following clarifications:

- ?? Require SBC/Ameritech to offer multiple PVPs per Channel Bank Assembly ("CBA") on the date that Alcatel's software Release 11 is deployed at each SBC/Ameritech RT;
- ?? Require SBC/Ameritech to allow virtual collocation of CLEC-owned line cards;

?? Require SBC/Ameritech to support card pooling for CLEC-owned line cards upon the effective date of this Order; and

?? Require SBC/Ameritech to support card sharing for CLEC-owned line cards upon completion of OSS modifications that allow SBC/Ameritech to identify and inventory line cards of more than one carrier.

If the Commission is reluctant to order full unbundled access to Project Pronto and CLEC line card collocation, at a minimum the Commission must set forth specific details regarding SBC/Ameritech's obligations to "offer a modified platform when new line cards become available," or to allow CLECs "to specify alternative line cards." Proposed Order, at 31. Absent clear guidelines and requirements from the Commission, the parties will invariably find themselves before the Commission in enforcement actions – precisely the result the Proposed Order sought to avoid. Proposed Order, at 33. Given the absolute unwillingness of SBC/Ameritech to allow CLECs any input into the features and capabilities supported by the Project Pronto architecture, the Joint CLECs are extremely skeptical that SBC/Ameritech will freely and timely support new line cards, and new line card capabilities required by CLECs. The Joint CLECs' skepticism is corroborated by the Proposed Order's express concerns that SBC/Ameritech may attempt to delay availability of Project Pronto component UNEs by "seizing on ambiguities" to force CLECs to arbitrate to obtain such features, or by asserting supposed technical modifications that require unreasonably long periods to implement. See e.g., Proposed Order, at 32. Therefore, in order for the Commission's order to benefit the Joint CLECs, the Commission must provide specific details regarding the timeframe and procedure for CLECs to request new line cards and new line card capabilities and for SBC/Ameritech to deploy those new cards and capabilities. Further, the Commission must clarify that there is a

presumption that the CLECs have a right to utilize new line card features, and that SBC/Ameritech must not be allowed to refuse to support such new features by claiming a lack of process to handle the request. Finally, the Commission must set forth a detailed, expedited dispute resolution process in the event that SBC/Ameritech refuses to support new line cards and/or capabilities.

EXCEPTION NO. 2 – PROPOSED REPLACEMENT LANGUAGE

For the foregoing reasons, all of the Commission Analysis and Conclusions in Section D from page 32 to 33 should be deleted and replaced with the following:

The only assurance for CLECs to obtain all of the features and functionalities of the Project Pronto network is for the Commission to order again that CLECs have unbundled access to the Project Pronto UNEs that We have already identified. With complete unbundled access, CLECs will be assured of having the ability to order and provision different products and services than SBC/Ameritech and its affiliate. (Sprint Ex. 3.0, p. 38) For example, CLECs will be able to provision a PVP once release 11 of the Alcatel software is released and manage the traffic of multiple customers over that particular PVP in a way that differentiates its service from SBC/Ameritech's service. Moreover, with complete unbundled access CLECs will be assured of being able to provision qualities of service like specified constant bit rate (CBR) PVCs that may differ from the CBR PVCs that SBC/Ameritech is offering. CLECs, of course, will be expected to pay the approved TELRIC rates for the PVC and PVP capacity used. To the extent there is additional consumer demand for throughput capacity, We view that as a positive development. Consumer demand will be satisfied and SBC/Ameritech will be justly compensated for its investments through the TELRIC methodology. Thus, as We ordered before, SBC/Ameritech must make the following list of UNEs available to CLECs:

- a. Lit Fiber Subloops between the RT and the OCD in the CO consisting of one or more PVPs ("permanent virtual paths") and/or one or more PVCs ("permanent virtual circuits") at the option of the CLEC;
- b. Copper Subloops consisting of the following segments:
 - i. the copper subloop from the RT to the NID at the customer premises;
 - ii. the copper subloop from the RT to the SAI ("serving area interface");
 - iii. the copper subloop from the SAI to the NID at the customer premises.

- c. ADLU line cards owned by the CLEC and collocated in the NGDLC equipment in the RT;
- d. ADLU line cards owned by the ILEC in the NGDLC equipment in the RT;
- e. A port on the OCD in the CO; and
- f. Any combination thereof, including a line-shared xDSL loop from the OCD port to the NID.

The evidence shows that multiple PVPs per channel bank and plug-in cards with four ports, instead of two ports, will become available only with Release 11 of the software. As the Joint CLECs recognized in their testimony and briefs, the ordering of PVPs before the installation of Release 11 presents capacity concerns for SBC/Ameritech. Dr. Ransom from Alcatel testified that Alcatel intends to release the software for testing in late August, 2001. It will take several months for SBC/Ameritech to test the new software but we require SBC/Ameritech to install it in the NGDLCs as soon as testing is completed. If SBC/Ameritech does not install the software by November 1, 2001, it must prove to the Commission that it is not technically feasible to install it. CLECs will be allowed to comment on SBC/Ameritech's filing and the Commission will determine if a contested case needs to be opened. Once Release 11 is installed, CLECs will then be able to enjoy the full features and functionalities of all of the Project Pronto network elements detailed above.

We also recognize that SBC/Ameritech claims that it must make multiple network and OSS modifications necessary to support the delivery of elements. We find SBC/Ameritech's arguments largely unpersuasive. Wholesale network modifications will not need to be made the day after this Order is effective. For example, just because PVPs are named a network element, there is no need for SBC/Ameritech to virtually replicate all of the Project Pronto network elements waiting for CLECs to utilize double or more of the capacity that SBC/Ameritech initially deployed. SBC/Ameritech only must increase the capacity of its network if it obtains enough orders from CLECs that require it. And the evidence introduced here demonstrates that SBC/Ameritech's initial design of Project Pronto appears to have more than enough fiber and other capacity, including OCD ports, to meet the needs of its affiliate and the Joint CLECs. We accept that SBC/Ameritech may need to make some OSS modifications to track the virtual collocation of CLEC line cards and that SBC/Ameritech will be able to charge CLECs the TELRIC rates for developing such a system. We, however, do not find this to be a particularly complicated or unprecedented issue. As ordered by the FCC, SBC/Ameritech developed the OSS to implement line sharing. Virtual card collocation does not present issues more complicated than the line sharing effort.

While we order SBC/Ameritech to unbundle the Project Pronto elements listed above and to take all necessary steps to install the Alcatel Release 11 software and to make all of those unbundled network elements available as quickly as possible, We are concerned that our prior order would, in all likelihood have delayed CLEC use of the various network elements as SBC/Ameritech, under the guise of making the network and OSS modifications necessary to support the delivery of elements, waited until a requesting CLEC brought an enforcement action

compelling delivery. To that end, in this order on rehearing, we accept Staff's alternative proposal on an interim basis and order SBC/Ameritech to file, in Illinois, a tariff identical in all respects, including the opportunity for the installation of new line cards and services, to the tariff language proposed by the Joint CLECs that was appended to their Joint Brief on Exceptions and identified as Attachment 1. Delivery and installation intervals for provisioning the end-to-end HFPL UNE are one business day for loops not requiring conditioning and three business days for loops requiring conditioning. The language the Joint Brief on Exceptions Attachment 1 is designed to implement the end-to-end HFPL UNE as it was ordered by the arbitrators in Texas. Prices for the end-to-end HFPL UNE shall be set on an interim basis in accordance with the adjustments made by Staff witness Koch. Such prices will remain in effect until such time the Commission adopts permanent TELRIC prices and are subject to true-ups. Accordingly, pursuant to our authority under Section 13-501 of the Illinois Public Utilities Act, we direct SBC/Ameritech to modify its tariff within 30 days of the date of this order to incorporate verbatim the language proposed by the Joint CLECs. We further conclude that the tariff should make clear that CLECs with interconnection agreements will be able to order out of the tariff and the tariff will govern the terms, conditions and rates of the end-to-end HFPL UNE unless and until the Commission modifies this finding. These requirements, which are fully consistent with the law and the procompetitive policies of the General Assembly, should be made available to CLECs an end-to-end HFPL UNE that they can use to provide wireline-based DSL services to their customers in an expeditious manner. This solution moots all of SBC/Ameritech's arguments relating to the following issues: line card ownership; line card incompatibility; access to sub-loops; PVP exhaust and stranded capacity. With this solution, We expect that CLECs will be able to designate the installation of all technically feasible line cards. We also expect SBC/Ameritech to implement all technically feasible quality of service classes. To that end, We order SBC/Ameritech to provision constant bit rate (CBR) quality of service in excess of 96 kbps such that CLECs can obtain a quality of service that meets their customer requirements. The evidence demonstrates that there is no technical reason for limiting CBR permanent virtual circuits to 96kbps.

We now must address the implementation aspects of the six UNEs that we have ordered to be offered when SBC/Ameritech implements Release 11 of the Alcatel software. With respect to the TELRIC pricing methodology for the Project Pronto unbundled network elements ordered herein, We will open a follow-up docket to examine the rates proposed by SBC/Ameritech. While the parties agreed to address pricing in a follow-up docket, SBC/Ameritech in response to questions from the Commission, presented the TELRIC cost studies and prices for its proposed Broadband Service. Staff analyzed these cost studies and proposed some adjustments. Since we have the authority to issue an interim tariff in dockets, (220 ILCS § 5/13-501(b)) we order that SBC/Ameritech tariff the UNEs described above at the rates using Staff's adjustments until such time that permanent pricing is determined for these UNEs in the follow-up docket. Regarding the terms and conditions in the tariff for the individual Project Pronto UNEs, We order SBC/Ameritech to make the identified UNEs and the virtual collocation of line cards available by supplementing the end to end HFPL tariff described above that is attached to the Joint CLECs Brief on Exceptions. We expect that the tariff in all respects to be identical to the end to end HFPL tariff with the exception of additional terms necessary to implement the offering of individual UNEs. This tariff, however, will not be effective until Release 11 of the Alcatel software is installed and operational in the NGDLCs deployed by SBC/Ameritech. CLECs with interconnection agreements will be able to order out of the tariff and the tariff will govern the

terms, conditions and rates of the Project Pronto UNEs unless later amended by a subsequent interconnection agreement or amendment.

Because the Proposed Order lists Issue VI regarding the feasibility of unbundling the Project Pronto architecture, that heading and the sentence after it is rendered moot if the Commission adopts Joint CLECs' recommendations contained in Exception 2. Accordingly, if the recommendations in Exception 2 be adopted, the heading for Issue VI and the sentence that appear on page 34 of the Proposed Order it should be deleted.

III. EXCEPTION 3 – CLECS MUST BE ALLOWED TO VIRTUALLY COLLOCATE LINE CARDS AT REMOTE TERMINALS

The Proposed Order states that its adoption of Staff's alternative proposal moots the issues regarding the CLEC collocation of line cards. For the reasons stated above, Joint CLECs submit that the virtual collocation of line cards is vitally important in assuring that CLECs are able to use all of the features and functionalities of the loop architecture deployed by SBC/Ameritech. While the end-to-end HFPL UNE with processes for CLECs to designate the placement of line cards is an important in ensuring the development of competition, the best way for CLECs to guarantee that they can obtain additional quality of services over the PVCs and to provide xDSL services not offered by SBC/Ameritech, is though the virtual collocation of line cards. To that end, Joint CLECs propose the following language for the Commission to adopt regarding the virtual collocation of line cards. The language repeats the Intervenor's position and the Commission Analysis and Conclusion from the case before rehearing and adds the Joint CLEC position and proposed Commission analysis and conclusion on rehearing.

A. Intervenor's Position

CLECS must be allowed to collocate equipment, including line cards, that would lower the cost of providing advanced services, and increase the range of services available to their customers. Section 251(c)(6) of the Act requires ILECs to provide, on a nondiscriminatory basis and at just and reasonable rates, physical collocation of equipment necessary for interconnection or access to unbundled network elements. The FCC determined in its Advanced Services Order

that the pro-competitive provisions of the Act are technology-neutral and apply to advanced data services as well as to voice services. The standards set by the FCC serve only as a floor, and the authority to resolve other issues not addressed in the Advanced Services Order is expressly reserved for state commissions.

The FCC is receiving comments on the meaning of the term "necessary" in regard to line cards as well as other issues. Some parties have filed comments in that proceeding proposing that access to a network element is necessary so long as it is "directly related to" interconnection and access to unbundled elements, and an inability to collocate such equipment would interfere with a CLEC's ability to compete effectively and efficiently. This Commission should adopt this same standard because it meets the requirements of the Act and furthers the goals of facilitating competition and the deployment of advanced services.

The evidence in this proceeding demonstrates that line cards are necessary for interconnection or access to unbundled network elements. Line cards are the point and method of interconnection with ILEC networks and access to UNE subloops, substituting for a traditional standalone DSLAM when the loop is served by a transmission facility that contains fiber optics. The line cards also contain the splitter functionality necessary to support line sharing. Without the ADLU line cards, the NGDLC equipment in the RT cannot perform DSLAM and splitter functions. Therefore, the electronics on the line cards are necessary to generate and receive the data transmissions carried across the unbundled loop from the end user through the RT back to the central office. Without the ability to collocate line cards in the NGDLC chassis at the RT, xDSL providers would not be able to compete efficiently and effectively with the advanced services of the ILECs or their advanced services affiliates for several reasons.

First, it would be impossible to place a standalone DSLAM in all of SBC/Ameritech-IL's RTs, due to either space exhaustion or economic infeasibility. Second, the speed and reach of the xDSL service is tied directly to the length of copper loop over which xDSL is deployed. Competitors who must collocate a DSLAM at the CO would be disadvantaged because SBC/Ameritech-IL's affiliate would be able to access line cards at the RT, and therefore provide xDSL over a significantly shorter copper facility. As a result, SBC/Ameritech-IL's affiliate would be able to provide a higher speed offering over a wider area to consumers than would a CLEC. Third, CLECs would be foreclosed from offering any xDSL type, feature or functionality other than those that SBC/Ameritech-IL chooses to support with its line cards. Finally, CLECs might be altogether precluded from offering xDSL services over home-run copper due to the interference caused by the xDSL signals generated at the RT locations.

Based on all of these factors, Intervenor's argue that collocation of CLEC line cards in the NGDLC equipment in the RT is necessary and the Commission should order SBC/Ameritech-IL to allow such collocation.

B. Joint CLECs' Position on Rehearing

SBC/Ameritech presented no new evidence on the line card collocation issue and its arguments were the same as those rejected below. Joint CLECs stipulate that they are seeking virtual, not physical, collocation and also stipulate that they agree to use Alcatel manufactured or licensed line cards. These stipulations eliminate every concern SBC/Ameritech raised about

cost, lack of capacity and harm to the network. Accordingly, the Commission should reaffirm that CLECs are entitled to virtual collocation of Alcatel manufactured or licensed compatible line cards.

C. Commission Analysis and Conclusion

The Commission finds that line cards for the provision of xDSL-based services fit the definition of equipment necessary for the provision of advanced services. The FCC has found that competitive providers of advanced services should be allowed to collocate integrated equipment that would lower the cost of providing advanced services, and increase the range of services available to their customers. Section 251(c)(6) of the Act requires ILECs to provide, on a nondiscriminatory basis and at just and reasonable rates, physical collocation of equipment necessary for interconnection or access to UNEs. The FCC determined in its Advanced Services Order that the pro-competitive provisions of the Act are technology-neutral and apply to advanced data services as well as to voice. The authority to resolve issues not addressed in the Advanced Services Order is expressly reserved for state commissions.

The Commission is aware that the FCC is currently receiving comments on the meaning of the term "necessary." However, the FCC has acknowledged that time is vitally important in the advanced services market. SBC/Ameritech-IL is rapidly deploying Project Pronto and intends to allow its affiliate to use Project Pronto for line shared xDSL. Therefore, the Commission will not put on hold its decision regarding CLEC collocation of line cards, given the urgency of the issue for Illinois competitive providers and end users.

Intervenor proposes that the Commission determine that collocation of equipment is necessary so long as the equipment is "directly related to" interconnection or access to unbundled elements, and an inability to collocate such equipment would interfere with a CLEC's ability to compete effectively and efficiently. The Commission finds that this standard meets the requirements of the Act and furthers the goals of facilitating competition and the deployment of advanced services in Illinois.

The evidence in this case establishes that access to line cards is necessary for interconnection and/or access to the UNEs identified by this Commission in this Section. Line cards are the point of interconnection with the ILEC fiber-fed NGDLC network, substituting for a traditional DSLAM and splitter. Line cards are also the means by which CLECs access subloops. In the NGDLC loop network, the line cards determine what types of xDSL based services can be provided to end users. Without the ability to collocate line cards in the NGDLC chassis at the RT, xDSL providers would not be able to compete efficiently and effectively with the advanced services of the ILECs or their advanced services affiliates. CLECs would be able to achieve the same functionality by collocating a standalone DSLAM at the RT. However, as discussed above, collocation is expensive and entails considering planning and delays in provisioning as compared to the use of the line card. Furthermore, xDSL based services are distance sensitive and, in many cases, a collocated DSLAM solution would not give service equivalent in quality to a xDSL service provisioned using line cards.

The Commission therefore orders that SBC/Ameritech-IL shall allow all CLECs to collocate, on non-discriminatory terms and at just and reasonable prices, their own line cards in

the NGDLC equipment in the RT. The Commission further notes that it finds unpersuasive SBC/Ameritech-IL's argument that collocation of CLEC line cards at the RT would cause SBC/Ameritech-IL to incur additional expense. SBC/Ameritech-IL's evidence on this point consists of unsupported assertions and generalities. Moreover, SBC/Ameritech-IL already has substantial experience with the collocation of multiple CLECs' equipment in central office environment. Thus, the Commission precludes SBC/Ameritech-IL's imposition of any charge related to such claimed additional expense at this time. Should SBC/Ameritech-IL experience actual increased expenses of this nature, it may in a future proceeding propose recovery of such expenses that are efficiently and prudently incurred.

D. Commission Analysis and Conclusion on Rehearing

The Commission reaffirms its March 14, 2001 Order as it pertains to line card collocation. SBC-SBC/Ameritech put on virtually no new evidence to support its arguments that CLECs should not be permitted to collocate line cards in the RT. SBC-SBC/Ameritech relied on the testimony of Mr. Boyer. Mr. Boyer's testimony was largely redundant of Mr. Lube, who testified for SBC/Ameritech on line card collocation in the underlying proceeding, and whose views were rejected by the Commission. The argument that line cards are not UNEs was made before and was rejected. The argument that collocation of line cards in the NGDLC is not technically feasible was also previously rejected by the Commission. SBC/Ameritech presented no new persuasive facts to bolster these arguments. In fact, the Commission finds it ironic that the bulk of new evidence on these issues supports the Joint CLECs' position. For example, it is clear after rehearing that SBC originally intended to treat line cards as UNEs and to permit CLECs to collocate line cards. SBC/Ameritech never adequately explained its shift from that position to its current stance but Joint CLECs' argument that the shift was done after the fact to avoid unbundling obligations is a plausible explanation.

SBC/Ameritech's claims about NGDLC capacity exhaust due line card collocation are unsupported. The evidence demonstrates that SBC/Ameritech has substantial unused NGDLC capacity. Moreover, the alleged exhaust can be relieved by line card pooling or some other mutually beneficial form of card sharing.

The Commission makes three clarifications to its initial order. First, collocation of line cards in this Order refers to virtual collocation. Specifically, CLECs can purchase line cards and transfer them to SBC/Ameritech for installation and maintenance. This arrangement will allow CLECs, including SBC/Ameritech's affiliate, to share the ports on installed line cards. Second, line cards used by CLECs must be compatible with the Alcatel Litespan NGDLC equipment. Line cards manufactured by Alcatel or licensed for manufacture by Alcatel for use in its Litespan equipment shall be considered compatible. Third, as long as the line card is developed by Alcatel or a licensee and it is deemed compatible with SBC/Ameritech's NGDLC equipment, SBC/Ameritech cannot prohibit an unaffiliated CLEC from virtually collocating such a card simply because SBC/Ameritech's affiliate is not providing service with such a line card. We expect SBC/Ameritech to cooperate fully with CLECs in the placement of new line cards under these requirements.

IV. EXCEPTION NO. 4 – CLECS MUST BE GIVEN DIRECT ACCESS TO OSS

The Joint CLECs take exception to the finding in the Proposed Order that denies CLECs direct access to SBC/Ameritech's Operations Support Systems ("OSS"). In reaching this conclusion, the Proposed Order ignores entirely the extensive record in this proceeding without explanation, and instead adopts the result in an unrelated proceeding – Docket No. 00-0592. This approach constitutes legal error for four reasons.

First, the result in Docket 00-0592 is not supported by record evidence. Second, Docket 00-0592 was intended to examine whether SBC/Ameritech had complied with Merger Condition 29 regarding modifications to SBC/Ameritech's OSS needed to reverse the deleterious effects on competitors of the SBC/Ameritech merger. In other words Docket 00-0592 was not focused on CLEC requirements for line sharing (on all-copper or Project Pronto loops). Thus, even if there had been an evidentiary record in Docket No. 00-0592, it would not have been sufficient to support a finding regarding the requisite OSS access for line shared loops – the subject of this proceeding. Third, the Proposed Order violates due process because CLECs had no notice that the results of an unrelated proceeding in which all of the members of the Joint CLECs did not participate would determine the outcome of this proceeding. Fourth, the finding in the Proposed Order is contrary to the finding that the Administrative Law Judge made, and the Commission adopted, three times before when confronted with the same arguments and evidence. The evidence presented in this rehearing further substantiated the Joint CLECs' position that they must have direct access to the same OSS data and functionality available to SBC/Ameritech's employees. Thus, it is legal error to adopt a different result now.

The Joint CLECs will explain in detail below each of these bases of legal error in the Proposed Order's finding denying CLECs direct access to OSS data and functionality.

A. The Result of an Unrelated Docket Cannot Bind the Administrative Law Judge Here As A Matter of Illinois Law

The Proposed Order states that “[t]he Commission recently disposed of the same [direct access] issue in the Order on Rehearing in ICC Docket No. 00-0592 ...” Proposed Order, at 39. As discussed below, Docket No. 00-0592 did not have an adequate record or scope to properly dispose of the direct access issue for line shared loops. However, even if Docket No. 00-0592 could be viewed as addressing the same direct access issues as this proceeding, the findings in that docket are not dispositive here.

It is well established that prior Commission decisions do not have binding precedential effect. *Abbott Laboratories, Inc. v. Illinois Commerce Commission*, 289 Ill. App. 3d 705, 682 N.E. 2d 340 (First Dist., 1997); see also *Mississippi River Fuel Corp. v. Illinois Commerce Commission*, 1 Ill. 2d 509, 513; 116 N.E. 2d 394, 396-97 (1953) (the Commission is not bound by principles of res judicata, and is, therefore, not bound to give precedential effort to prior orders; *Peoples Gas, Light and Coke Co. v. Illinois Commerce Commission*, 175 Ill. App. 3d 39, 51 (Sept. 8, 1988) (“the commission shall have power to deal freely with each situation as it comes before it, regardless of how it may have dealt with a similar or even the same situation in a previous proceeding”). Thus, Hearing Examiner Woods was not legally bound by the result in Docket No. 00-0592. Further, as discussed in detail below, it is legal error for the Proposed Order to rely on the result in Docket No. 00-0592 because that proceeding had an insufficient record on the issue of direct access, and did not examine OSS requirements for line sharing. Finally, it is understandable that Hearing Examiner Woods may wish to be consistent with other Commission decisions, but it is more appropriate to rely on the results of Docket No. 00-0312/0313 regarding direct access. That docket concerned technical and operational issues

associated with line sharing, the same topic of this proceeding. As discussed below, Docket No. 00-0592 did not examine OSS requirements for line sharing.

B. The Proposed Order Commits Legal Error By Overriding the Prior OSS Holding in This Proceeding With the OSS Finding in Docket No. 00-0592

1. Commission decisions must be based on the evidentiary record in each case

Illinois law mandates that the Commission must base each of its decisions on the evidentiary record in each case. The Illinois Administrative Procedure Act states:

In all proceedings, investigations or hearings conducted by the Commission, except in the disposition of matters which the Commission is authorized to entertain or dispose of on an ex parte basis, any finding, decision or order made by the Commission *shall be based exclusively on the record for decision in the case*, which shall include only the transcript of testimony and exhibits together with all papers and requests filed in the proceeding220 ILCS 5/10-103 (emphasis added).

Further, prior Commission decisions have made clear that the Commission may not disregard the record evidence in a hearing and instead abdicate to the record in a different proceeding. For example, in a case investigating issues related to the unbundling of delivery of electric utility services, the Commission held that state law mandates that a Hearing Examiner's decision must be based solely on the record in the instant proceeding. Opinion, Illinois Commerce Commission v. Illinois Central Light Company, et al. Investigation Concerning the Unbundling of Delivery Services Under Section 16-108 of the Public Utilities Act, Docket No. 99-0013, Dec. 22, 1999. The Commission stated

Section 10-103 of the Act requires that "...any finding, decision or order made by the Commission shall be based exclusively on the record for decision in the case" The Commission is bound to follow the statute. *Id.* at 41.

It is not enough that a different Commission proceeding may have addressed related issues. *Id.* The Commission rejected arguments that the holdings in an Interim Order and tariff proceedings regarding certain unbundling issues were dispositive in the instant case. *Id.* The

Commission stated that, although the holdings in the other proceedings were relevant, they were not dispositive. *Id.* In particular, the Commission noted that the scope of the other proceedings cited by parties were different than the instant case, thereby making those other holdings non-dispositive. The Commission stated “Furthermore, in the utility specific delivery services proceedings cited by various parties, the Commission addressed only the question of the proper basis for calculating the price/credit for the SBO, not other unbundled delivery services.” *Id.* at 42. As in *Illinois Central Light*, the Commission here cannot rely on the record of a different proceeding, even if the dockets address related issues, because the scope of the dockets vary significantly. As discussed below, Docket No. 00-0592 did not encompass an examination of OSS requirements for line sharing. Thus, the result in Docket No. 00-0592, like the prior proceedings in *Illinois Central Light*, was not of sufficient scope to provide a dispositive result in the instant proceeding.

2. The Finding Regarding Direct Access in Docket No. 00-0592 Was Not Supported By an Evidentiary Record

The Proposed Order states that “[t]he Commission recently disposed of the same [direct access] issue in the Order on Rehearing in ICC Docket No. 00-0592, where we concluded that direct access was not required by Federal law nor necessary, given the proofs adduced by the parties seeking it.” Proposed Order, at 39. It was legal error for the Proposed Order to rely on the result in Docket No. 00-0592 to determine the outcome in this proceeding, because there were no proofs adduced by the parties in Docket No. 00-0592.

In Docket No. 00-0592, the Commission concluded that CLECs had not presented sufficient evidence that they require direct access to loop provisioning information in SBC/Ameritech-IL’s backend systems, databases and records. Order in Docket No. 00-0592, at 82. The Commission held that “[g]iven the limited record before us, we see no reason to input a

direct access provision into the POR.” Order in Docket No. 00-0592. The Commission also acknowledged that the sparse evidence presented by CLECs was insufficient to reach any meaningful conclusion regarding direct access for CLECs. The Commission stated:

The CLECs here appear to want direct access to AI’s back office systems – not just to the information contained in those back systems. They do not explain, however, why they need direct access to the systems or how and under what circumstances and to what extent such direct access is to be provided. More importantly, they have not identified what information in any of the particular back systems is necessary and not being provided them or what cannot be provided them through other systems. For example, the CLECs have not told us why the federal POR for Advanced Services wherein AI tells us it has agreed to provide over 30 data elements of information electronically, is inadequate for their purposes. Order in Docket No. 00-0592, at 81, 82.

Thus, the Proposed Order errs by setting up a legal “Catch-22” on the direct access issue. In Docket No. 00-0592, the Commission concluded that direct access was not necessary because the CLECs had failed to submit a record demonstrating a need for direct access. The Proposed Order now concludes that direct access cannot be granted in this proceeding (where there is a substantial evidentiary record supporting the CLEC request for direct access) because the issue was already decided in Docket No. 00-0592. Such approach is legal error and must be reversed.

The record in this proceeding clearly demonstrates that CLECs are entitled to direct access under federal law because CLECs will not have access to the same OSS data and functionality in the same timeframe as SBC/Ameritech employees without direct access. The record in this proceeding addresses every one of the security, confidentiality and technical operational concerns identified by the Commission in Docket No. 00-0592 as being insufficiently examined. Order in Docket No. 00-0592, at 83. It is legal error and wasteful of Commission resources to abandon the thorough and complete record in this docket, and instead rely on a decision in an unrelated docket acknowledged by the Commission as having an insufficient record.

3. The Rehearing in Docket No. 00-0592 on Direct Access Examined A Solely Legal Question and Did Not Compile Any Additional Record Evidence To Support Its Findings

In relying on the Commission's Order on Rehearing in Docket No. 00-0592, the Proposed Order ignores the procedural history and scope of the rehearing in that docket. As a result, the Proposed Order improperly concludes that the Order on Rehearing in Docket No. 00-0592 disposes of the matters on rehearing in this docket.

As discussed above, the Commission in its January 24, 2001 Order in Docket No. 00-0592 declined to order SBC/Ameritech to include direct access to SBC/Ameritech's OSS as part of its OSS Plan of Record for Illinois because there was an insufficient record support. Order in Docket No. 00-0592, at 82-84. The Commission did not alter its prior finding in the Covad/Rhythms Line Sharing Arbitration however, and explicitly found that CLECs could elect to opt-into Covad or Rhythms agreement, pursuant to Section 252(i) of the Telecommunications Act. Order in Docket No. 00-0592 at 83-84.

Following entry of that Order, McLeod USA Telecommunications Services, Inc., Rhythms, and Covad filed an application for rehearing, requesting that the Commission grant rehearing solely to correct its erroneous *legal* conclusion that SBC/Ameritech need not provide CLECs direct access to its OSS. Application for Rehearing at 1-3. The Commission subsequently granted McLeod's, Rhythms' and Covad's Application for Rehearing on this issue. Given the limited scope on rehearing, the parties did not introduce any additional record evidence. Indeed, it would have been improper for the parties to do so because it would have exceeded the scope of rehearing.

As a result, the Commission had before it the same record on rehearing in Docket No. 00-0592 as it did when it issued its original order in January 2001. The Commission reaffirmed its prior order in that docket. Notably, it did not address or alter the Commission's prior orders in

the Covad/Rhythms Line Sharing Arbitration or the March 14 Order. Accordingly, the Commission's Order in Docket No. 00-0592 simply reaffirms that, where the record fails to demonstrate that SBC/Ameritech's employees have direct access to OSS, the Commission cannot order such access for CLECs.

The Order on Rehearing in Docket No. 00-0592 cannot – as the Proposed Order finds – stand for the proposition that CLECs are not entitled to direct access regardless of what the record evidence demonstrates. Federal law requires that CLECs have access to SBC/Ameritech's OSS in the same time and manner as any SBC/Ameritech's employee. The record in this proceeding unquestionably demonstrates that SBC/Ameritech employees have the direct access to OSS data and functionality that CLECs are denied. Indeed, SBC/Ameritech's witness Mr. Waken acknowledged this fact in his direct testimony and on cross examination.. Such a record was absent in Docket No. 00-0592, as the Commission's Order observes. By ignoring the record in this docket, the Proposed Order incorrectly concludes that SBC/Ameritech may discriminate against CLECs by relegating them to gateway access, even though SBC/Ameritech's employees have different OSS access. Such a result is contrary to law; thus, the Proposed Order errs in relying on the Commission's Order on Rehearing in Docket No. 00-0592 to deny CLECs direct access to SBC/Ameritech's OSS.

4. Docket No. 00-0592 Did Not Examine OSS Requirements for Line Sharing

Docket No. 00-0592 was intended to examine whether SBC/Ameritech had complied with Condition 29 in the Merger Order. The purpose of that condition was to ensure that SBC/Ameritech would “build a viable OSS system” to support UNE orders in a timely manner after the merger closed. Merger Order, at p. 205-214 (II). Although the Merger Condition Order contains a brief discussion of OSS necessary to provide “pre-loop qualification information,” it

contains no discussion of OSS needed for line sharing. Similarly, neither the Order, nor Order on Rehearing in Docket No. 00-0592, which implemented Condition 29, contain any discussion of line sharing. Therefore, even if Docket No. 00-0592 did have an adequate record on direct access issues generally (which it did not by the Commission's own admission), the docket did not examine OSS issues related specifically to line sharing. Illinois law requires that all Commission decisions be based solely on the record of the proceeding. 220 ILCS 5/10-103. Further, the Commission has determined that the results of a prior proceeding are not dispositive in another proceeding especially if there is any discrepancy in the scope of the two proceedings. *Illinois Central Light*, Docket No. 99-0013. Thus, the Proposed Order commits legal error by relying solely on the result in Docket No. 00-0592 to deny direct access to SBC/Ameritech's OSS in this proceeding.

5. Docket No. 00-0592 is Contrary to the Precedent of Docket No. 00-0312/0313

Without explanation, the Proposed Order rejects the holdings of the Commission's three prior orders granting CLECs direct access to the same OSS data and functionality available to SBC/Ameritech's employees. *See* Docket No. 00-0312/00-0313 Award; Docket No. 00-0312/00-0313 Award on Rehearing; Docket No. 00-0393 Order. The evidence and argument presented on rehearing do not differ from those before the Commission in those proceedings.⁵ The Proposed Order errs by ignoring the Commission's prior orders based on similar orders in favor of an order based on an incomplete record in an unrelated proceeding at the Commission.

While the Commission is not bound to follow previous decisions as precedent in subsequent proceedings if the Commission desires (to the extent possible) to implement

consistent decisions on CLEC OSS access, the Commission should look to the results of the Rhythms/Covad arbitration in Docket No. 00-0312/0313 to determine the direct access issue rather than Docket No. 00-0592. The arbitration decision in Docket No. 00-0312/0313 is a more appropriate precedent for the Commission for at least two reasons. First, the arbitration decision is actually first in time of the Commission decisions regarding direct access. Five months prior to the issuance of the decision in Docket No. 00-0592 on January 24, 2001, the Commission had already approved the decision in the Rhythms/Covad line sharing arbitration (Docket No. 00-0312/0313 issued August 17, 2000) awarding Rhythms and Covad direct access to the backend systems, databases and records of SBC/Ameritech. Further, SBC/Ameritech-IL sought rehearing on a number of issues from that award, including direct access, but the Commission reaffirmed its holding and declined to grant rehearing on that issue. Thus if the Commission needs to take any action to make its decisions consistent, it should revisit its decision in Docket No. 00-0592 based on an incomplete record and adopt the results of the Rhythms/Covad arbitration and/or this proceeding instead.⁶

Second, the arbitration in Docket No. 00-0312/00-313 examined the OSS needs of CLECs for line shared loops (both all-copper and fiber-fed DLC Project Pronto loops) under federal law. In contrast, Docket No. 00-0592 was a proceeding examining SBC/Ameritech's general OSS obligations under state merger conditions. As previously discussed, that proceeding did not examine any OSS issues specific to line shared loops.

(Continued)

⁵ Indeed, the testimony submitted was so similar that Administrative Law Judge Woods granted the Joint CLECs' motion to strike a substantial portion of the testimony. The Commission subsequently reinstated all the testimony into the record.

⁶ Joint CLECs note that the period for parties to file petitions for rehearing of the decision in Docket No. 00-0592 has not yet run; therefore, it is not clear that the results of that decision will stand as rendered.

Finally, the Commission's order in the case below recognized that it was rendering a decision consistent with the prior decision in Docket No. 00-0312/0313. Order, at 83-84. The Commission's decision in the case below took note of Docket No. 00-0592 and specifically referred to, and then rejected SBC/Ameritech's argument that the holding in that proceeding should determine the outcome of this proceeding as soon as it became final. It is legal error for the Proposed Order on rehearing to suddenly diverge from the Commission's repeated holdings and reject the extensive record in the Commission's two line sharing proceedings in favor of the results in an unrelated proceeding that did not examine OSS requirements for line sharing.

C. The Proposed Order Commits Legal Error Because it Denies CLECs Direct Access, Which They are Entitled to Under Federal Law

The Proposed Order errs by adopting the SBC/Ameritech position that it is not required to provide CLECs with direct access to the same OSS data and functionality available to its own employees. Despite a fourth opportunity to prove its claims, SBC/Ameritech again failed to present any evidence to satisfy its burden of proof, as required by the PUA. 220 ILCS 5/9-201(c). Moreover, as discussed in detail below, the Joint CLECs affirmatively proved that it is just and reasonable, technically feasible and required by law that CLECs have direct access to SBC/Ameritech's OSS data and functionality. Joint CLEC Brief, at 117-118, 123-129. Thus, the Proposed Order erred by adopting SBC/Ameritech's position regarding direct access to OSS despite the fact that SBC/Ameritech failed to satisfy its burden under Illinois law.

1. The Telecommunications Act and UNE Remand Order Require CLEC Direct Access to OSS Data and Functionality

The parity and non-discrimination provisions of the Telecommunications Act require SBC/Ameritech to give CLECs access to OSS data and functionality in the same manner as itself. The record in this proceeding clearly shows that SBC/Ameritech employees have direct access, as well as gateway access, to all loop provisioning information in SBC/Ameritech's

records, backend systems and databases. Joint CLEC Brief, at 122. SBC/Ameritech employees also have direct access to a number of OSS features, functions and capabilities with which they analyze the technical characteristics of SBC/Ameritech's loop plant. Joint CLEC Brief, at 126. Furthermore, the parity provisions of the Telecom Act and the UNE Remand Order mandate that SBC/Ameritech give CLECs access to OSS data and functionality in the same timeframe and manner as itself. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, Memorandum Decision and Order, CC Docket No. 96-98, FCC 96-325, at ¶ 518 (Aug. 8, 1996), *rev'd in part, Iowa Utilities Board v. FCC*, 120 F.3d (8th Cir., 1997), *rev'd in part, AT&T Corp. v. Iowa Utilities Board*, 119 S.Ct. 721, 1999 WL 24568 (1999), (cited hereinafter as "*First Report and Order*"); UNE Remand Order, at ¶ 427-428.

The evidence in this proceeding amply demonstrates that SBC/Ameritech-IL employees have direct access, as well as gateway access, to all loop provisioning information and functionality in SBC/Ameritech's records, backend systems and databases. Joint CLEC Brief, at 122. As discussed above, such access by any SBC/Ameritech employee entitles CLECs to the same OSS data and functionality. Moreover, the fact that SBC/Ameritech may -- and is considering -- discontinuing the use of its advanced services affiliate (ASI-North) to offer xDSL service underscores the need to ensure that CLECs have equal and non-discriminatory OSS access.

As discussed in the Joint CLEC Brief, the U. S. Court of Appeals for the D.C. Circuit vacated on January 9, 2001 the separate affiliate requirement of the FCC's SBC/Ameritech Merger Order. *Association of Communications Enterprises v. FCC*, U.S. Court of Appeals, D.C. Circuit, No. 99-1441 (Jan. 9, 2001; with clarification on Jan. 18). SBC has publicly stated that it is considering reabsorbing its data affiliates this year. SBC Press Release, Statement of Jim

Ellis, January 9, 2001, Attachment A of Rhythms' Reply to Exceptions to Proposed Order; Rhythms Rehearing Exh. 1.0 (Ayala), at 15-16.

Because this proceeding will set permanent rates, terms and conditions, it must attempt to take into consideration all market conditions likely to arise in the near future. It would clearly be a violation of federal law for SBC/Ameritech's internal DSL unit to have access to OSS data and functionality not available to CLECs. Thus, the Proposed Order finding that CLECs are not entitled to direct access must be reversed to prevent such occurrence. At the very least, the Proposed Order must be revised to order that CLECs will be given direct access immediately if SBC/Ameritech discontinues use of a separate affiliate to provide advanced services such as xDSL.

D. The Proposed Order Commits Legal Error Because It Opens the Door for SBC/Ameritech to Challenge the Final Order in Docket No. 00-0312/0313 Without Notice or Record Support

Without any prior notice, the Proposed Order reverses the Commission's prior decision in Docket No. 00-0393 granting CLECs direct access to the same OSS data and functionality available to SBC/Ameritech employees. The Proposed Order notes that the decision in Docket No. 00-0393 relied on the holdings in Docket No. 00-0312/-0313. The Joint CLECs are concerned that SBC/Ameritech will seize upon this language improperly to argue that there is now doubt about the validity of the holdings in Docket No. 00-0312/0313 even though that arbitration award is not at issue in this case. The Joint CLECs were given no notice that the results of that Order could be affected or reversed in this proceeding. Such ruling in the Proposed Order is legal error and must be reversed.

For all of the reasons stated above, the finding in the Proposed Order denying CLECs direct access to the same OSS data and functionality available to SBC/Ameritech employees is legal error. Therefore, the Commission analysis and conclusion in the Proposed Order must be

revised to allow CLECs access to all OSS data and functionality available to SBC/Ameritech employees, as follows:

E. Proposed Revision For OSS Language

The Joint CLECs propose the following revised language regarding OSS. All of the Commission's Analysis and Conclusions in Section D on page 44 of the Proposed Order should be deleted and replaced as follows:

D. Commission Analysis and Conclusion

Although the Commission recently issued an Order on Rehearing in ICC Docket No. 00-0592 declining to require SBC/Ameritech to provide CLECs with direct access to OSS, that finding does not dispose of the issue in this proceeding for a number of reasons. Under Illinois law, Commission decisions must be supported by an adequate evidentiary record. 220 ILS 5/10-103. However, the Commission acknowledged in its initial order in Docket No. 00-0592 that the record in that proceeding was too limited to reach any meaningful conclusion regarding direct access for CLECs. The Commission stated:

The CLECs here appear to want direct access to AI's back office systems – not just to the information contained in those back systems. They do not explain, however, why they need direct access to the systems or how and under what circumstances and to what extent such direct access is to be provided. More importantly, they have not identified what information in any of the particular back systems is necessary and not being provided them or what cannot be provided them through other systems. For example, the CLECs have not told us why the federal POR for Advanced Services wherein AI tells us it has agreed to provide over 30 data elements of information electronically, is inadequate for their purposes. Order in Docket No. 00-0592, at 81, 82.

To the contrary, the CLECs in this proceeding have submitted substantial evidence demonstrating that SBC/Ameritech employees have access to a variety of OSS data and functionality via direct access that is unavailable to CLECs. Joint CLEC Brief, at 122-130. The evidence makes clear that SBC/Ameritech has sole discretion in deciding what information CLECs may access. Joint CLEC Brief, at 117. Further, the CLECs presented substantial evidence that the scope of OSS that must be made available to CLECs includes databases and backend systems. Joint CLEC Brief, at 118-119. Rehearing Tr. (Waken), at 2562:10-2563:2.

Direct access to will ensure that CLECs get access to all of the information made available to SBC/Ameritech in the same timeframe as the ILEC employees because the evidence demonstrates that the database used for CLEC loop provisioning inquiries made through gateways is updated less frequently than the database directly accessed by SBC/Ameritech employees for loop provisioning inquiries. Joint CLEC Brief, at 131. Further, direct access will enable CLECs to perform manual loop qualifications themselves, thereby avoiding the expensive

manual loop qualification charges SBC/Ameritech proposes. Joint CLEC Brief, at 131. After a thorough review of federal law, we conclude that CLECs must have direct access to the same OSS data and functionality available to any SBC/Ameritech employee. UNE Remand Order, at ¶¶ 427-428; 47 C.F.R. Section 251(c)(3).

We note that this holding is consistent with the decision in Dockets 00-0312 and 00-0313 (cons.) (Orders entered August 17, 2000) ("Arbitration Orders") and in the original order in this docket, which was based in large part upon the Arbitration Orders.

For these reasons, we confirm our decision requiring direct access to SBC/Ameritech's back office systems and databases and adopt the following Joint CLECs' proposed tariff language on this issue.

Similar to its conclusion in the Arbitrations, the Commission finds that SBC/Ameritech-IL must provide nondiscriminatory access, at just and reasonable rates, to its OSS sufficient to support the line sharing UNEs whether the line-shared loop is configured over all copper or fiber-fed DLC. The FCC's Line Sharing Order requires ILECs to provide access to the portion of the loop over which data is transmitted as a UNE, and all OSS necessary to support this UNE. The FCC defines such OSS broadly to include records, mechanized backend systems and databases (and the information contained therein), gateways and interfaces used to support pre-ordering, ordering, provisioning, testing and maintenance and billing for xDSL services. SBC/Ameritech-IL must provide access to OSS functionality and data useful for CLECs to determine what type of DSL is suitable for a loop (pre-ordering), place orders for the CLEC's chosen type of xDSL service into the SBC/Ameritech-IL systems to be processed, and have the line-shared loop provisioned, tested, and repaired as quickly as possible.

The non-discrimination requirement in the Telecommunications Act of 1996 carries two obligations for ILECs. First, an ILEC must provide OSS functions to a CLEC that are analogous to functions it provides itself. The CLEC's access must be "equal in terms of quality, accuracy and timeliness" in order to be sufficient. This translates to provision of the same electronic access to OSS functions and full access to detailed loop provisioning information as an ILEC has itself so that the CLEC can perform pre-ordering, ordering and provisioning in "substantially the same time and manner" as the ILEC. Second, the ILEC must give CLECs a meaningful opportunity to compete by providing access to OSS systems and functionalities required to support a service even if there is no ILEC retail analog. Based on the evidence submitted in this proceeding the Commission finds that SBC/Ameritech-IL's current proposal does not comply with its non-discrimination and parity obligations under the Telecommunications Act of 1996.

Access to OSS is critical to a CLEC's ability to compete fairly with the ILECs. The UNE Remand Order requires the incumbent LEC to provide "the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install." Not only must the CLEC be given access to the same qualifying loop information the ILEC has, but if any information exists "anywhere within the incumbents' back office and can be accessed by any of the incumbent LEC's personnel" it must be available to the CLEC. The CLEC must have the same level of access to data as ILECs enjoy themselves and in the same format. Therefore, because the evidence in this proceeding

demonstrates that ILEC employees have direct and gateway access, CLECs must have both types of access also. Further, ILEC employees have access to OSS functionality that allows them to analyze loop provisioning data such as availability of spare loops for a particular customer. Therefore, CLECs must have access to such functionality as well.

The evidence submitted in this proceeding demonstrates that SBC/Ameritech-IL and personnel have access to all available data in SBC/Ameritech-IL's records, backend systems and databases, but SBC/Ameritech-IL has not made that information available to requesting CLECs. SBC/Ameritech-IL wishes to limit CLEC access to the data available to its internal retail operations, but that limitation does not comply with the FCC's orders and the clear need of CLECs for adequate data to support their services. The evidence also demonstrates that SBC/Ameritech-IL provides to itself a level of integration and flow through for pre-ordering, ordering, and provisioning not available to CLECs. Further, SBC/Ameritech-IL has failed to provide to the Commission detailed information on the OSS support it will provide for line sharing provisioned over the new fiber-fed DLC configuration.

The Commission finds that SBC/Ameritech-IL may not limit the information and OSS support it provides to CLECs to less than what the FCC and the Telecommunications Act of 1996 require. In addition, SBC/Ameritech-IL may not attempt to restrict loop qualification and other data on the grounds that SBC/Ameritech-IL is capable of making provisioning decisions on behalf of the CLECs. The FCC has made it clear that CLECs must be given information adequate to enable them to make independent judgments about whether to accept or reject a loop as well as other decisions relating to the provisioning of their own competitive services. SBC/Ameritech-IL may not rely on the POR as setting in stone its OSS obligations, because SBC did not disclose information about OSS changes necessary to support line sharing in the development of the POR. The parties are not in agreement that the POR is adequate. The Commission has received enough evidence to make its own finding on OSS support for line sharing without relying solely on the POR. We note that the POR was not established to examine OSS needed for line sharing. The Commission is expressly authorized in the Merger Conditions Order and recent direction from the FCC to conduct its own examination of the OSS functionality and data needed to support line sharing. SBC/Ameritech-IL presented no convincing evidence that allowing CLECs the direct, read only access to information they are seeking would create network failures or security breaches. The Commission ordered such direct access in Docket No. 00312/00313 and SBC/Ameritech-IL has reported no problems.

The Commission finds that SBC/Ameritech-IL must provide CLECs with access to the following OSS functions and data, in addition to its commitments under the POR:

- a. read only, mediated, direct access and gateways to all of the loop plant data available in SBC/Ameritech-IL's back end systems, databases and records without restriction; at a minimum this shall include, but not be limited to, data in the LFACS, FACS, TIRKS, ARES, TMM, SWITCH, SWITCH DLE, SOAC, ACIS, WFA/C, WFA/DO, WFA/DI, LMOS and LEAD/LEIS systems and/or databases;
- b. a CLEC audit of all OSS databases and backend systems listed above, in order to determine all OSS functionality and data useful in pre-ordering, ordering, provisioning, maintenance and repair and billing for line shared xDSL. Such

audit shall include, at a minimum, the following systems: LFACS, FACS, TIRKS, ARES, TMM, SWITCH, SWITCH DLE, SOAC, ACIS, WFA/C, WFA/DO, WFA/DI, LMOS and LEAD/LEIS systems and/or databases and shall include, in advance, all documentation needed to audit the systems and databases, including but not limited to user guides, data dictionaries, glossaries, job cards and table guides, with a description of each data field, all valid entries and an explanation of the data in that field;

- c. access to OSS data and functionality for pre-ordering, ordering, provisioning, maintenance and repair and billing line shared loops over Project Pronto that is contained in databases and backend systems including, but not limited to, SOLID, SWITCH DLE, TIRKS, LFACs, ARES; SBC/Ameritech-IL shall also provide such OSS data and functionality for any other new network configurations SBC/Ameritech-IL plans to deploy;
- d. access to OSS functionality, including but not limited to reports and inquiries on loop plant data contained in SBC/Ameritech-IL's backend systems, databases and records;
- e. all useful information about loop plant available to SBC/Ameritech-IL; SBC/Ameritech-IL is not entitled to delay provision of this information until CLECs are able to identify in which databases the information resides.

The Commission also wants to make it clear that the read-only direct access it orders in this Decision must be provided to CLECs at no additional charge. The Commission is persuaded by Intervenor's evidence that Intervenor and other CLECs may utilize such access simply by using the same means of access (i.e., a personal computer running in terminal emulation mode) as do SBC/Ameritech-IL employees. Moreover, SBC/Ameritech-IL has supplied no quantification of its claim that such access would entail additional cost to SBC/Ameritech-IL. Should SBC/Ameritech-IL experience such additional costs as it enables read-only direct access in an efficient manner, it may seek recovery of such costs in a future proceeding.

1. Commission Analysis and Conclusion on Rehearing

We find that no changes are necessary to our analysis and conclusions regarding access to OSS. SBC/Ameritech's OSS witness Waken repeats in substantial part the testimony of its original hearing OSS witness Ms. Jacobson. SBC/Ameritech-IL provided no proof to support SBC/Ameritech's assertion that CLEC direct, read-only access would harm the OSS. In particular, there is no evidence regarding SBC/Ameritech's assertions that direct access will tax the capacity of SBC/Ameritech-IL's OSS. SBC/Ameritech's witnesses could not even identify the capacity of its OSS to handle simultaneous inquiries. Rehearing Tr. (Mitchell) at 1718:20-22. Likewise SBC/Ameritech-IL failed to prove that transaction volumes would increase with direct access. SBC/Ameritech-IL also failed to prove that even if the Commission assumes that transactions will increase due to direct access that its systems could not handle additional volume. Indeed, SBC/Ameritech is implementing new OSS functionality that by design will increase transaction volumes. Rehearing Tr. (Waken) at 2646:12-22; 2647:1-7. Yet

SBC/Ameritech admitted that these increased volumes would not negatively affect its systems. Rehearing Tr. (Mitchell) at 1765-1767.

SBC/Ameritech also failed to demonstrate that CLEC direct access would have any effect on customer safety or privacy. This failing is particularly egregious because customer safety and privacy are matters that the Commission takes very seriously. We note that the only evidence in the record concerning possible misuse of data obtained from SBC/Ameritech's databases or backend systems concerns ILEC employees.

V. EXCEPTION 5 – RECORD CLARIFICATIONS.

The Proposed Order makes two minor errors regarding the parties that filed testimony and participated in this proceeding that need to be corrected. First, the Proposed Order omitted the Sprint witnesses that testified on Rehearing, and identifies Terry Murray solely as a Covad witness. The second to last sentence in the full paragraph on page 2 of the Proposed Order should be deleted and replaced with the following:

Torsten Clausen and Robert Koch testified on behalf of Staff; Michael Starkey testified on behalf of AT&T and WorldCom; Melia Carter; and Larry Gindlesberger testified on behalf of Covad; James Burt, James Dunbar, and Dr. Brian K. Staihr testified on behalf of Sprint; Joseph Ayala and Danny Watson testified on behalf of Rhythms, and Terry Murray testified on behalf of Covad and Rhythms. On August 3, 2001, the parties filed their Initial Briefs on Rehearing.

Second, the Introduction and Procedural History on page 1 should be modified to recognize that Covad did not withdraw from the case below, but instead withdrew its testimony that was adopted largely by Rhythms. Accordingly, the third sentence on page 1 of the Proposed Order should be deleted and replaced with the following:

Several parties filed petitions seeking leave to intervene, which were granted by the Hearing Examiner, including Rhythms Links, Inc. ("Rhythms"), AT&T Communications of Illinois Inc. ("AT&T"), Sprint Communications LP ("Sprint"), Covad Communications Co. ("Covad") (who withdrew its testimony from the case below, but then filed testimony on rehearing), WorldCom, Inc. ("WorldCom"), Focal Communications of Illinois ("Focal"), and the CLEC Coalition (a consortium of CLECs including @Link Networks, Inc., CoreComm Illinois, Inc., DSLnet Communications, LLC and Vectris Telecom, Inc).

CONCLUSION

The Commission should reaffirm its previous orders by making the changes recommended by Joint CLECs or, in the alternative, by affirming the March 14 Order.

Respectfully submitted,

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